

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ROBERT L. DAVIS,

Petitioner,

v.

9:12-CV-1843

MARK BRADT, SUPERINTENDENT

Respondent.

THOMAS J. McAVOY
Senior United States District Judge

DECISION and ORDER

I. INTRODUCTION

This *pro se* petition for a writ of *habeas corpus* pursuant to 28 U.S.C. § 2254 was referred to the Hon. Andrew T. Baxter, United States Magistrate Judge, for a Report and Recommendation (“R&R”) pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c). In his September 5, 2013 R&R, Magistrate Judge Baxter recommends that the petition be denied and dismissed, and that no certificate of appealability be issued. Dkt. # 20. Pending are Petitioner’s timely objections to the R&R. Dkt. # 23.

II. STANDARD OF REVIEW

When objections to a magistrate judge’s R&R are lodged, the district court makes a “*de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1)(C); see also United States v. Male Juvenile, 121 F.3d 34, 38 (2d Cir. 1997) (the Court must make a *de novo* determination to the extent that a party makes specific objections to a magistrate’s findings.).

“[E]ven a *pro se* party’s objections to a Report and Recommendation must be specific and clearly aimed at particular findings in the magistrate’s proposal, such that no party be allowed a second bite at the apple by simply relitigating a prior argument.” Machicote v. Ercole, 2011 WL 3809920, at *2 (S.D.N.Y. Aug. 25, 2011) (citations and interior quotations marks omitted). By the same reasoning, a party may not advance new theories that were not presented to the magistrate judge in an attempt to obtain this second bite at the apple. See Calderon v. Wheeler, 2009 WL 2252241, at *1 n.1 (N.D.N.Y. July 28, 2009). General or conclusory objections, or objections which merely recite the same arguments presented to the magistrate judge, are reviewed for clear error. Farid v. Bouey, 554 F. Supp. 2d 301, 306 n.2 (N.D.N.Y. 2008) (citing Edwards v. Fischer, 414 F. Supp. 2d 342, 346-47 (S.D.N.Y. 2006)).

After reviewing the report and recommendation, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.” 28 U.S.C. § 636(b)(1)(C).

III. DISCUSSION

Having considered Petitioner’s objections and reviewed the issues *de novo*, the Court determines to adopt Magistrate Judge Baxter’s recommendations for the reasons stated in the September 5, 2013 R&R. Moreover, Petitioner has not pointed to any error in Magistrate Judge Baxter’s analysis, and the Court finds that those portions of the R&R that Petitioner has chosen to reargue are not clearly erroneous.

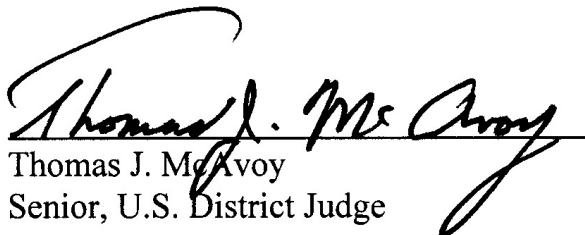
IV. CONCLUSION

Therefore, the Court ACCEPTS and ADOPTS the recommendations made by Magistrate Judge Baxter in the September 5, 2013 R&R. For the reasons set forth therein, the petition is DENIED and DISMISSED.

In addition, the Court determines that the petition presents no question of substance for appellate review, and that Petitioner has failed to make a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); see FED. R. APP. P. 22(b). Accordingly, a certificate of appealability will not issue.

IT IS SO ORDERED.

Dated: February 11, 2014


Thomas J. McAvoy
Senior, U.S. District Judge